In the High Court of Judicature at Madras

Dated :- 21.11.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

W.P.Nos.34244 to 34246 of 2003
W.P.M.P.Nos. 41524 to 41526 of 2003

S.Anthony ... Petitioner in all W.Ps.

Vs.

1. The Registrar,
The Tamil Nadu Taxation Special Tribunal
Chennai.

2. The Commercial Tax Officer, (FAC)
Thanjavur II, Assessment Circle,
Thanjavur. ... Respondents in all W.Ps.

PRAYER: Writ petitions under Article 226 of the Constitution of India praying for the relief of issuance of writ of Certiorari to call for the records of the impugned proceedings of the first respondent in O.P.Nos.160, 119 and 120 of 2003 dated 7.3.2003 respectively and quash the same.

For Petitioner :- Mr.P.R.Kumar
For Respondents:- Mr. R.Tholkappian, Government Advocate

JUDGMENT

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

The writ petitions are filed against the order of the Tamil Nadu Taxation Special Tribunal rejecting the original petitions filed by the petitioner on the ground that the delay in filing the appeals before the Appellate Assistant Commissioner could not be condoned as the appeals were sought to be filed beyond the statutory period prescribed under Section 31(1) of the Tamil Nadu General Sales Tax Act.

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2. It is seen from the records that the petitioner is an unregistered dealer. As per the assessment order, the petitioner had supplied stone ballast to Southern Railway, Madurai in terms of the contract agreement and received payments for such supplies made during the years 1996-97, 1997-98 and 1998-99. Being an unregistered dealer and inasmuch as the assessee has not filed any return and paid tax, it was proposed by the assessing officer to assess the assessee finally to the best of judgment for the assessment years 1996-97, 1997-98 and 1998-99. Accordingly a pre-assessment notice was issued to the petitioner. A perusal of the assessment order shows that the petitioner did not file any objections to the pre-assessment notice nor appeared before the assessing officer. Hence , in respect of the above assessment years, the assessing officer assessed the tax payable by the petitioner and also levied penalty under Section 12(3)(b) of the TNGST Act. The said assessment orders were served on the petitioner on 12.3.2002. Against the said assessment orders, the petitioner preferred appeals before the Assistant Appellate Commissioner on 28.10.2002. The said appeal papers were returned by the office of the Appellate Assistant Commissioner on the ground that the delay in filing the appeals could not be condoned as the appeals were filed beyond the condonable period prescribed in the statute. Aggrieved by the said order, the petitioner preferred original petitions before the Tamil Nadu Taxation Special Tribunal contending that the delay in filing the appeal was due to the reason that the petitioner suffered from a mental illness for the past two years and to that effect a medical certificate was also filed before the authority concerned. However, the Tribunal by common order dated 7.3.2003 rejected the petitions filed by the petitioner and confirmed the order of the Appellate Assistant Commissioner. Aggrieved by the same, the petitioner has come before this Court challenging the correctness of the order of the Tribunal.

3. Learned counsel appearing for the petitioner pointed out that the terms of the contract agreement shows that the contract is purely a works contract and that while passing the assessment orders statutory deductions under Section 3-B were not made by the assessing officer by giving exemption on the local purchases and labour charges. Learned counsel further submitted that during the course of assessment proceedings, the petitioner suffered from mental illness for a period of two years and therefore the petitioner could not prefer the appeals within the stipulated period.

4. Heard the learned counsel appearing on either side and perused the materials on record.

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5. Having regard to the submission made by the learned counsel for the petitioner as regards the statutory deductions to be made under Section 3(B) as the contract being works contract, which the assessing officer has not followed and the medical certificate relied on by the learned counsel for the petitioner and in the interest of justice, we hereby set aside the assessment orders of the assessing officer as well as the impugned orders of the Taxation Special Tribunal by directing the petitioner to appear before the assessing officer the second respondent , the Commercial Tax Officer (FAC), Thanjavur II Assessment Circle, Thanjavur on 10.12.2007 and produce the relevant contract agreements, the books of accounts pertaining to the entire dealings and other documents relied on by him so as to substantiate his contention as regards the claim for exemption under the statutory provisions. On such appearance of the petitioner, the assessing officer is directed to proceed with the assessment proceedings in accordance with law. The petitioner shall co-operate with the assessing authority in the assessment proceedings. If the petitioner fails to appear on the day referred to above, the assessments orders would automatically revive and the orders of the Tribunal shall stand confirmed.

6. With these observations, the writ petitions are disposed of. Consequently, the connected W.P.M.Ps are closed. No costs.

krr/

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar,
The Tamil Nadu Taxation Special Tribunal
Chennai.

2. The Commercial Tax Officer, (FAC)
Thanjavur II, Assessment Circle,
Thanjavur.

+ 3 ccs to Mt. P.R. Kumar, Advocate SR Nos. 68953,68954,68956
+ One cc to Spl Govt Pleader (Taxes) SR 69000

KSJ(co)
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W.P.Nos.34244 to 34246 of 2003
Dated: 21.11.2007

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